

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 415 (Sub-No. 2X)

ESCANABA & LAKE SUPERIOR RAILROAD COMPANY—ABANDONMENT  
EXEMPTION—IN ONTONAGON AND HOUGHTON COUNTIES, MICH.

Decided: April 15, 2014

By decision and notice of interim trail use or abandonment (NITU) served on September 27, 2010, the Board granted to Escanaba & Lake Superior Railroad Company (ELS) an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to abandon approximately 42.93 miles of rail line between milepost 408.02 at Ontonagon and milepost 365.09 at Sidnaw, in Ontonagon and Houghton Counties, Mich.<sup>1</sup> Notice of the exemption was served and published in the Federal Register on April 27, 2010 (75 Fed. Reg. 22,174). Also, in response to a NITU request by the Michigan Department of Natural Resources and Environment (MDNRE), and in light of ELS' willingness to enter into trail use negotiations, the Board granted a 180-day period for such negotiations, which was subsequently extended to June 26, 2011, at which point the parties terminated negotiations. The railroad, however, sought and obtained several extensions of the consummation date for the abandonment authority, and when ELS consented to a new request by MDNRE for the issuance of an NITU, the Board, on September 24, 2013, extended the negotiating period until March 10, 2014.

On February 24, 2014, MDNRE filed a request to extend the negotiating period for the entire line for 180 additional days. By letter filed on February 25, 2014, ELS notified the Board that it is agreeable to continue trail use negotiations, but only as to the northernmost 13 miles of the line between milepost 395.0 at Rockland and the end of the line at milepost 408.02. ELS states it has determined to use the remainder of the line between Rockland and Sidnaw for car storage and other non-common carrier purposes. On April 2, 2014, ELS filed a letter in which it states that, on that date, it (1) consummated abandonment of the line segment between mileposts 395.0 and 365.09, and (2) simultaneously redesignated that segment as exempt ancillary track under 49 U.S.C. § 10906.<sup>2</sup>

The Board's authority to impose trail use conditions is limited because the Board's role under the Trails Act is largely ministerial, see Citizens Against Rails-to-Trails v. STB, 267 F.3d

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<sup>1</sup> Two environmental conditions and a public use condition were also imposed in the September 27 decision. The public use condition expired on March 28, 2011.

<sup>2</sup> The environmental conditions imposed on the grant of abandonment authority are self-executing and, therefore, are not a barrier to consummation.

1144, 1151-52 (D.C. Cir. 2001), and the trail use program is voluntary and consensual between the railroad and the trail user, see Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986). Here, because ELS has consented to continue trail use negotiations only for the segment of the line between mileposts 395.0 and 408.02, an extension can be granted only for that segment.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period for a portion of the line and is willing to continue trail use negotiations for that portion of the line, the Board retains jurisdiction, and the NITU negotiating period may be extended.<sup>3</sup> Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). An extension of the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the Trails Act. Accordingly, the NITU extension request will be granted for the 13-mile segment of the line between mileposts 395.0 and 408.02 for a period of 180 days from the March 10, 2014 expiration date of the prior negotiating period until September 6, 2014.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request to extend the NITU negotiating period is granted to the extent discussed above, and the NITU negotiating period is extended for 180 days, until September 6, 2014, for the 13-mile segment of the line between milepost 395.0 at Rockland and the end of the line at milepost 408.02.

2. This decision is effective on the date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

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<sup>3</sup> See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).